

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
FEB 20 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules to) WT Docket No. 96-162
Establish Competitive Service Safeguards)
for Local Exchange Carrier Provision of)
Commercial Mobile Radio Service)
)
Implementation of Section 601(d) of the)
Telecommunications Act of 1996)

REPLY COMMENTS OF BELL SOUTH

BellSouth Corporation, on behalf of itself and its affiliates ("BellSouth") hereby replies to the Comments filed in response to Petitions for Reconsideration in the captioned proceeding.

BellSouth replies to the Comments of the Puerto Rico Telephone Company ("PRTC"), which addressed the Petition for Reconsideration filed by Aliant Communications Co. ("Aliant"). In its Petition, Aliant asked the Commission to clarify that in connection with the implementation of the separate subsidiary requirement mandated by the Commission, Aliant is permitted to remove the assets being spun-off into a separate subsidiary at net books cost, rather than at the value that would result from application of Section 32.27 of the Commission's Rules.¹ PRTC agrees with Aliant's request, and asks that the ruling apply to all similarly situated local exchange carriers ("LECs"), including PRTC. BellSouth agrees with the requests of Aliant and PRTC.

¹ Aliant Petition at 1.

No. of Copies rec'd 049
1-ABCDE

This issue is governed by the Court of Appeals' ruling in Illinois Public Telecommunications Association v. FCC, 117 F.3d 555 (1997)(“Illinois”). In Illinois, the D.C. Circuit addressed the appropriate accounting treatment for industry restructures mandated by the government. Illinois dealt with the implementation of the Commission's Payphone Order.² In that decision, the Court held that the Commission's affiliate transaction rules do not apply to mandated industry restructures. Rather, the assets involved are to be valued at net booked cost, in accordance with Generally Available Accounting Principles (“GAAP”). The Court's decision is equally applicable here. The Commission has mandated that the wireless assets of an LEC be transferred to a separate subsidiary as a safeguard against improper cost allocations between the wireless and wireline aspects of the company's operations. There is no change of ownership of the assets, and no gain or loss results from the transfer. Under such circumstances, GAAP requires that the transfer take place at net book cost.

In any event, as PRTC points out, wireless assets of the LECs are already classified as “unregulated” for accounting purposes. Therefore, the customers of wireline telephone service have borne none of the risks associated with wireless operations, and therefore, under well settled principles of law, are not entitled to any of the gain that would accrue upon the disposition of those assets.³ For that reason, neither Section 32.27 of the Commission's Rules, nor the exogenous cost rules applicable to price cap LECs, 47 C.F.R. § 61.45(d), are applicable to these transactions.

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541, recon., 11 FCC Rcd 21233 (1996) (“Payphone Order”).

³ See Democratic Central Committee v. Washington Metropolitan Area Transit Commission, 485 F.2d 786, 806 (D.C. Cir. 1973). cert. den., 415 U.S. 935 (1974).

The Commission should grant Aliant's Petition for Reconsideration and declare that the transfers mandated in the Order are to be valued at net book cost, and that no exogenous cost adjustment is required for price cap LECs.

Respectfully submitted,

BELLSOUTH CORPORATION

By its attorneys,

A handwritten signature in black ink, appearing to read "R. Sbaratta", written over a horizontal line.

M. Robert Sutherland

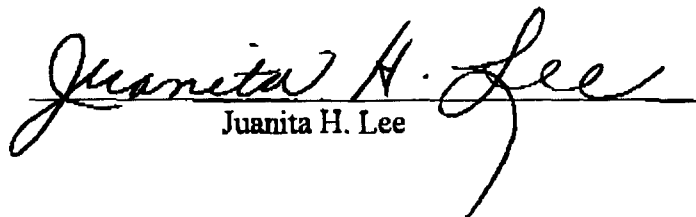
Richard M. Sbaratta

Suite 1700
1155 Peachtree Street, N.E.
Atlanta GA 30309-3610
(404) 249-3386

February 20, 1998

CERTIFICATE OF SERVICE

I do hereby certify that I have this 20th day of February 1998 served all parties to this action with a copy of the foregoing REPLY COMMENTS OF BELL SOUTH by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.



Juanita H. Lee

Service List Docket WT 96-162

Michael S. Pabian
Ameritech
2000 W. Ameritech Center Drive
4H82
Hoffman Estates, Illinois 60196-1025

Howard J. Symons
Donna N. Lampert
Sara F. Seidman
Michelle M. Mundt
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo
Attorneys for AT&T Wireless Services, Inc.
701 Pennsylvania Avenue, N.W. - Suite 900
Washington, DC 20004

Jack B. Harrison
Frost & Jacobs
Attorneys for Cincinnati Bell Telephone Company
2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

Thomas E. Taylor
Sr. Vice President - General Counsel
Cincinnati Bell Telephone Company
201 East Fourth Street, 6th Floor
Cincinnati, Ohio 45202

Frank W. Krogh
Donald J. Elardo
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Adam A. Anderson
Senior Counsel
CMT Partners
651 Gateway Boulevard
15th Floor
So. San Francisco, California 94080

Thomas Gutierrez
J. Justin McClure
Lukas, McGowan, Nace & Gutierrez,
Chartered
Suite 1200
1111 Nineteenth Street, N.W.
Washington, D.C. 20036

Leonard J. Kennedy
Laura H. Phillips
Christina H. Burrow
Dow, Lohnes & Albertson, PLLC
Attorneys for Comcast Cellular Communications, Inc.
1200 New Hampshire Avenue, N.W. - Suite 800
Washington, DC 20036

Laura H. Phillips
J.G. Harrington
Christina H. Burrows
Dow, Lohnes & Albertson, PLLC
Cox Communications, Inc.
1200 New Hampshire Avenue, N.W. - Suite 800
Washington, D.C. 20036

David Cosson
L. Marie Guillory
National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

Ann E. Henkener
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, Ohio 43215-3793

James P. Tuthill
Betsy Stover Granger
Pacific Bell Mobile Services
4420 Rosewood Drive
4th Floor, Building 2
Pleasanton, California 94588

Michael R. Bennet
Caressa D. Bennet
Bennet & Bennet, PLLC
Attorneys for Rural Telecommunications Group
1019 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Bruce E. Beard
Southwestern Bell Mobile Systems, Inc.
13075 Manchester Road, Suite 100N
St. Louis, Missouri 63131

James D. Ellis
Robert Lynch
Wayne Watts
David Brown
SBC Communications, Inc.
175 East Houston
San Antonio, Texas 78205

Durward D. Dupre
Mary Marks
Darryl Howard
Jonathan Royston
Southwestern Bell Telephone Company
One BellCenter
St. Louis, Missouri 63101

Glen Glass
Carol Tacker
Southwestern Bell Mobile Systems, Inc.
17330 Preston Road, Suite 100A
Dallas, Texas 75252

Jeffrey S. Bork
Sondra J. Tomlinson
US West, Inc.
1020 19th Street, N.W.
Suite 700
Washington, DC 20036

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, DC 20004

Richard Ekstrand
The Rural Cellular Association
2120 L Street, N.W.
Suite 520
Washington, DC 20554

Kathleen Q. Abernathy
David A. Gross
AirTouch Communications, Inc.
1818 N Street, N.W.
Washington, DC 20036

James R. Forcier
AirTouch Communications, Inc.
One California Street, 9th Floor
San Francisco, California 94111

Ashton R. Hardy
Michael Lamers
Hardy and Carey, L.L.P.
Attorneys for Radiofone, Inc.
111 Veterans Boulevard, Suite 255
Metairie, Louisiana 70005

Nicholas W. Allard
Michael S. Wroblewski
Nandan M. Joshi
Latham & Watkins
Attorneys for ITTA
1001 Pennsylvania Avenue, N.W. - Suite 1300
Washington, DC 20004-2505

Philip A. Hahn, Staff Director
Federal Regulatory Matters
NYNEX Government Affairs
1300 I Street, N.W., Suite 400 W.
Washington, DC 20005

Gina Harrison, Director
Federal Regulatory Relations
Pacific Telesis Group - Washington
1275 Pennsylvania Avenue, N.W. - Suite 400
Washington, DC 20004

John T. Scott, III
Attorney for Bell Atlantic and NYNEX Corporation
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

Robert A. Lewis
NYNEX Corporation
1111 Westchester Avenue
White Plains, NY 10604

Edward D. Young III
James G. Pachulski
Of Counsel Bell Atlantic Corporation
1320 N. Courthouse Road, 8th Floor
Arlington, VA 22101

Jeanne W. Stockman
Kurtis & Associates, P.C.
Attorneys for Aliant Communications Co.
Suite 600 - 2000 M. Steet, N.W.
Washington, DC 20036

David W. Zesiger
Independent Telephone & Telecommunications
Alliance
1300 Connecticut Avenue, N.W.
Washington, DC 20036

Magalie Roman Salas***
Secretary - Federal Communications Commission
1919 M. Street, N.W.
Room 222
Washington, DC 20554

International Transcription Service***
Suite 140 - 2100 M Street, N.W.
Washington, DC 20037

Bobby Brown***
Wireless Telecommunications Bureau
2025 M Street, N.W. - Room 7130
Washington, DC 20554

Cathleen A. Massey
Vice President - External Affairs
Douglas I. Brandon
Vice President - External Affairs
AT&T Wireless Services, Inc.
Suite 400 - 1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

David L. Meier, Director
Legislative & Regulatory Planning
Cincinnati Bell Telephone
P. O. Box 2301
Cincinnati, Ohio 45201-2301

Dan L. Poole, of Counsel
US WEST, Inc.
1020 19th Street, N.W., - Suite 700
Washington, DC 20036

Robert J. Keller
Law Office of Robert J. Keller, P.C.
Attorney for Guam Cellular and Paging, Inc.
4200 Wisconsin Avenue, N.W., #106-233
Washington, DC 20016-2157

Veronica M. Ahern
Nixon, Hargrave, Devans & Doyle LLP
Attorneys for Guam Telephone Authority
One Thomas Circle, N.W. - Suite 700
Washington, DC 20005

Joe D. Edge
Tina M. Pidgeon
Drinker Biddle & Reath LLP
Attorneys for Puerto Rico Telephone Company
901 15th Street N.W. - Suite 900
Washington, DC 20005